



**Request for City Council Committee Action
From the City Attorney's Office**

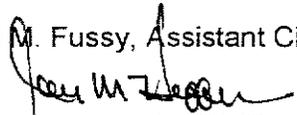
Date: April 28, 2004
To: Ways & Means/Budget Committee
Referral to:

Subject: Illinois Farmers Insurance Company v. City of Minneapolis, Hinery Ocampo & Mary Kubik
Hennepin County District Court File No.: PD 03-018391

Recommendation: That the City Council approve settlement of the above-referenced matter in the amount of \$5,346.00, payable to Illinois Farmers Insurance Company from Fund/Org. 6900 150 1500 2800 and further authorize the City Attorney's Office to execute all documents necessary to finalize the settlement.

Previous Directives:

Prepared by: Joel M. Fussy, Assistant City Attorney Phone: 673-2067

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

<p>Financial Impact (Check those that apply)</p> <p><input type="checkbox"/> No financial impact - or - Action is within current department budget. (If checked, go directly to Background/Supporting Information)</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Capital Budget</p> <p><input type="checkbox"/> Action requires an appropriation increase to the Operating Budget</p> <p><input type="checkbox"/> Action provides increased revenue for appropriation increase</p> <p><input type="checkbox"/> Action requires use of contingency or reserves</p> <p><input checked="" type="checkbox"/> Other financial impact (Explain): \$5,346.00 payable from Fund/Org. 6900 150 1500 2800</p> <p><input type="checkbox"/> Request provided to the Budget Office when provided to the Committee Coordinator</p>
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<p>Community Impact: Build Community</p>

Background/Supporting Information

This case arises as a result of a vehicular accident that occurred on December 9, 2002 involving Minneapolis Fire Engine 17. Fire Motor Operator Hinery Ocampo was driving Engine 17 on Lyndale Avenue South in response to a medical call. At the same time, co-defendant Mary Kubik (a private citizen) was driving her personal vehicle on 36th Street towards the Lyndale intersection. Ms. Kubik entered the intersection on a green light but failed to yield the right-of-way to Engine 17 in its capacity as an emergency

vehicle. The ensuing collision caused Engine 17 to veer into an unoccupied and parked vehicle belonging to Plaintiff's insured. Plaintiff filed this lawsuit, naming both Ms. Kubik and the City as defendants, seeking recovery of \$10,691.13 in insurance benefits paid out for the damage to their insured's parked vehicle, along with costs and disbursements.

The City brought a motion to dismiss asserting official immunity in front of Judge Kaman in Hennepin County District Court. Judge Kaman denied the motion at this stage of the proceedings, holding that Fire Motor Operator Ocampo's statutory duty to "slow down as necessary for safety" per Minn. Stat. § 169.03 prevented dismissal based upon official immunity. Based on discussions with Fire Chief Forte' and the department's investigation of FMO Ocampo's actions in this incident, it was decided to pursue settlement.

The City Attorney's Office negotiated with the attorney for Illinois Farmers Insurance. Plaintiff has agreed to settle with the City for one-half of its claim (\$5,346.00) and to proceed solely against defendant Kubik, fully-resolving the City's liability in regard to Plaintiff's claim. The City Attorney recommends that the finance officer be authorized to issue a settlement check to Illinois Farmers Insurance Company in the amount of \$5,346.00 payable from Fund/Org. 6900 150 1500 2800 and further recommends that the City Attorney's Office be authorized to execute any documents necessary to finalize the settlement.